

Cemetery Board Minutes

June 9, 2020

Via WebEx

BOARD MEMBERS PRESENT:

Mark Pattison, Department of State, Chair
Jill Faber, Office of the New York Attorney General
Thomas Fuller, Department of Health

OTHER ATTENDEES

Joseph Ambrose, Division of Cemeteries	Chris Cosco, Division of Cemeteries
Vince Gimondo, Division of Cemeteries	Andrew Hickey, Division of Cemeteries
Kerry McGovern, Division of Cemeteries	Lewis Polishook, Division of Cemeteries
Michael Seelman, Division of Cemeteries	Brendon Stanton, Division of Cemeteries
Joshua Beams, Dep't of State	John Fatato, Dep't of State
Antonio Milillo, Dep't of State, Counsel	Robert Vanderbles, Dep't of State

GUESTS:

David Fleming, NYSAC, Featherstonhaugh, Wiley & Clyne
Brendan Boyle, NYSAC, FWC
Bruce Geiger, Bruce Geiger & Assocs. for Pinelawn Memorial Park
Brian Groblewski, Pinelawn Memorial Park
Justin Locke, Pinelawn Memorial Park
David Flynn, Oxford Hills Crematory
Ralph Schoene, Counsel for Oxford Hills
Gordon Zuckerman, President, Vale Cemetery
Clark Adams, Superintendent, Vale Cemetery
Rich Moylan, Green-Wood Cemetery
Jay Ivler, Mt. Lebanon Cemetery
Joe Dispenza, Forest Lawn Group
Nate Romagnola, White Haven Memorial Park
Yvette Buckner, Better Place Forests
Nondi Chhabro, Better Place Forests
Mark Cuthbertson, Law Offices of Mark Cuthbertson

Opening Remarks

Mr. Pattison gave an overview of how the meeting would proceed via WebEx.

Mr. Milillo explained that the meeting is operating pursuant to Executive Order 202.1, which suspends the requirement to appear in person. The notice was posted in accordance with law and notice, agenda, and materials were posted on the web.

20-06-A-31 Minutes of Previous Meeting

Two separate motions were made, seconded, and unanimously adopted approving as submitted, the minutes of the Board's May 12, 2020 meeting, unchanged, and the amended minutes of the May 1, 2020 special meeting (the amendment was to correct a date).

20-06-B-32 Legislation and Regulations

1. Pending Legislation

Mr. Milillo provided the legislative report. He reported passage by both houses and delivery to the Governor for signature on one bill the Department is following: A 7652, S7048, which would permit cemeteries to pay third party vendors/websites a transaction fee for sale of cemetery lots, goods and services. There was no other activity on any pending legislation.

2. Rules and Regulations

There was nothing to report regarding Rules and Regulations

20-06-C-33 Division Report

Mr. Polishook stated the Division of Cemeteries quarterly statistics will be reported in July, when the first and second quarter's statistics will be reported together.

Mr. Polishook reported that burial wait times at cemeteries are being monitored by the Division, and that the wait time at most cemeteries has generally improved. Mr. Polishook stated that the cemeteries surveyed are experiencing approximately 28% above average burial rates.

Mr. Polishook reported that Woodlawn Crematory will be shutting down for repair on Sunday, June 14, which will impact the downstate area cremation totals by about 12 cremations per day(the average number of cremations done at Woodlawn each day), but this should not create significant hardship in the area.

Mr. Polishook reported on the internal examination of what was learned by the Division during the recent drastic changes brought about by pandemic, and reports that the Division did a good job adapting to new conditions brought about by the Covid-19 stay at home orders, with much work being done remotely without issue. He mentioned the Division is looking at ways to limit person to person contact and reduce travel while still accomplishing required tasks, using such tools as performing field examinations remotely to the extent possible. Mr. Polishook mentioned that cemetery reorganizational meetings should still be done in person, preferably outdoors, in order to facilitate safety and social distancing concerns.

Finally, Mr. Polishook mentioned the Division's amended Authorization for Cremation and Disposition form, and whether or not the Board would want to make the emergency rule changes permanent. Discussion ensued regarding this topic. Both the April 30, 2020 changes to the form and May 1, 2020 emergency rule making allow for diverting cremations to a different crematory than originally planned in case of emergency, with family permission. When the emergency rule expires, the remains could not be brought to a different crematory without a new authorization unless the box allowing for that is checked on the form. This could arise through a conscious decision of the family or inadvertence.

Mr. Polishook asked the Board what they would want to happen in those two cases. Discussion ensued. The board was in agreement that it would prefer to see the emergency rule made

permanent. A motion was made, seconded, and adopted to make the rule permanent and directing counsel to prepare and file necessary documents.

20-06-D-34 Vandalism, Abandonment and Monument Repair or Removal Fund Report

So far in the 2020 calendar year the Division has collected \$430,504 in vandalism funds. Assessment collections total \$248,081.

In the 2020 fiscal year, beginning April 1, 2020, vandalism funds collected total \$46,172, and assessment funds \$31,259.

To date, the Board has approved \$82,811.44 in applications, all for repair of hazardous monuments

The Board discussed three vandalism fund applications for repair of hazardous monuments:

Union Cemetery (45-066), requesting: \$7441.40
Fairview Cemetery (51-016), requesting: \$12,653.00
Broadway Cemetery (54-002), requesting: \$15,398.98

Discussion ensued concerning the adequacy of the notice at Broadway Cemetery and the need for an affidavit of publication. The cemetery indicated that it would address deficiencies in future applications.

Michael Seelman explained that the low bid for the work at Union Cemetery used an unusual method of restoring the foundations, but that this method had been used successfully at another cemetery abandoned to a town.

Motion was made, seconded, and unanimously adopted approving all three applications.

20-06-E-35 Ferncliff Cemetery (60-006) Lawn Crypt Application

Ferncliff Cemetery in Westchester County seeks approval for 100 new lawn crypts because it is running low on inventory. The cemetery has a proven track record of selling lawn crypt spaces and anticipates a return of \$765,000 into the General Fund. The project is very similar to a previous one from 2017. The installation should take only a matter of days, the landscaping will take longer but will be done over several months.

Mr. Milillo explained that the regulations provide the Board an opportunity to object to the installation of lawn crypts but do not speak of Board approval.

After discussion, a motion was made, seconded, and unanimously adopted indicating that the Board had no objection to the application.

20-06-G-37 Vale Cemetery (47-011) New Retort Application

Vale Cemetery in Schenectady County seeks approval for a new cremation retort. A new retort was installed last year but it failed and is currently in need of repair. The cemetery wishes to install a fourth retort. The crematory has been a very successful endeavor for the cemetery and the Division and cemetery believes that cremation rates in the area will continue to increase in

the future. The cemetery wish to have increased capacity to meet the burgeoning needs of their community, and in case of an event like the current pandemic.

Mr. Milillo expressed concerns regarding repayment of a 2003 PM deficit that is required to be paid back by 2003 board order and court order. It was previously reported that about \$700,000 had been paid leaving a balance of about \$300,000. The Division now reports the numbers are reversed, \$300,000 had been paid and about \$700,000 is still due. Mr. Milillo recommended accelerated payments be made so that it does not take an additional 35 years to pay the balance. He also asked about a Special Trust. Gordon Zuckerman, the new president of Vale Cemetery, spoke about the PM loan and repayment plan, indicating that with increased profitability the cemetery would pay off this loan faster than past payments indicate.

He answered questions regarding the cemetery's Special Trust. Mr. Zuckerman explained that the fund is not a true special trust (the use of income is not restricted).

Mr. Zuckerman noted that in April the crematory started taking cases from the metropolitan New York City area, due to the pandemic, and their number of cremations this year will be much higher than previous years. He mentioned that if the new retort is approved, when it is delivered, the retort that is currently down will also be repaired. Mr. Milillo asked whether a fourth retort is necessary if the third will be repaired.

Mr. Zuckerman stated that increased capacity had been recommended and is necessary, and noted it expected to perform 500 cremations per retort per year.

Motion made, seconded, and unanimously adopted to approve a fourth retort for Vale Cemetery.

20-06-H-38 Flushing Cemetery (41-002) Major Renovation Application

Flushing Cemetery seeks approval for major renovation of the second floor of their administration building. The second floor of this building is mainly an apartment used by the cemetery's superintendent and requires both lead and asbestos abatement and other renovation. There are structural issues, including roof leaks. Precautions would be taken to ensure the safety of cemetery personnel during this renovation and remediation. The cemetery would finance it out of its General Fund and is financially sound.

Mr. Fuller asked how long the project would take. Mr. Fleming stated the entire project would be three to four months in duration, and that the project would not interfere with cemetery operations.

After further discussion, a motion was made, seconded, and approved, subject to receipt of all necessary permits and approval, for major renovation application.

20-06-F-36 Oxford Hills Crematory (36-042) Retort Replacement Application

This application was tabled at the May 2020 Cemetery Board meeting, due to outstanding questions and issues concerning: 1. the crematory's capacity as of the time of grandfathering (January 1, 1998); 2. the final resolution via settlement agreement of legal issues identified by the Division and Board and referred to the Attorney General as well as penalties; and 3. further research by counsel concerning capacity. Mr. Polishook indicated that the Division concluded

that the crematory had three retorts as of January 1, 1998, although one was under repair for a long time in 1997-98.

Mr. Milillo commented on outstanding issues regarding an order by the Attorney General's office, and stated that all issues have been resolved to satisfaction of the Board, the Division, and counsel. The draft settlement orally accepted by Oxford Hills had been presented to the board for review prior to the meeting. The members indicated it was acceptable and had no changes.

Mark Pattison made a motion that the terms of settlement and fine payment timetable be approved by the board. That motion was seconded and unanimously carried.

Mr. Milillo spoke at length regarding grandfathering and suggested a discussion in Executive Session was needed to address legal issues. The Board agreed this discussion was necessary.

Public Comment

Yvette Buckner and Nondi Chhabro, on behalf of Better Place Forests, Inc., addressed the Board. Ms. Buckner stated that Better Place Forests (BPF), a company that provides memorial forest space for cremains but do not do any interment of bodies, wishes to enter the New York State market and were told they may need to comply with various New York State laws regarding cemeteries.

Due to technical difficulty, the representatives were momentarily unable to explain, so Mr. Milillo gave an overview of what BPF were, and how they operate. Mr. Milillo expressed concerns, citing similarities between what BPF does with regard to human cremains and an issue that arose years ago when a pet cemetery that charged for interment of cremated human remains. The issues with the pet cemetery led to regulations restricting pet cemeteries and human cremains. Mr. Milillo indicated that BPF's proposed model would raise similar concerns.

Mr. Milillo stated that if BPF seeks to come to NY State and seeks cemetery board review, it would have to submit a detailed proposal to the Division which could then be put on the board's agenda for review of whether the proposed activity would make it subject to N-PCL Article 15. Mr. Milillo also suggested that another avenue would be to seek special legislation.

Ms. Faber expressed her concerns and the need for more analysis. Mr. Polishook commented on the lack of permanence at pet cemeteries, and asked how this company could ensure some sort of permanence.

Mark Pattison stated that the company should put together a sufficiently detailed proposal and present it to Division for presentation to the Board. The Better Place Forest representatives agreed to do as much and send their proposal to Messrs Milillo and Polishook.

David Flynn from Oxford Hills Crematory expressed thanks to the Board for their consideration of their application to replace their retort and commented at length on the prior issues involving the crematory and the status of its third retort, explaining in detail the need for repairs and the reason for delay in effecting them.

David Fleming representing NYSAC noted that it would be appreciated if the Division could set forth a template for the ideal publication notification, so that it could be published in the NYSAC Broadcaster, in order to prevent any deviation from appropriate and accepted form.

Mr. Fleming also commented on the discussion with BPF, stating that allowing this proposal would essentially allow for-profit cemeteries within the State of New York. Mr. Fleming noted that further discussion and dialogue regarding this issue of scattering and of for-profit companies providing scattering services when not-for-profit cemeteries are regulated and must have costs and fees approved, is merited.

Mr. Polishook read a list of attendees to ask if anyone else wished to comment during this time. No one did.

Motion was made, seconded, and carried to go into Executive Session

Motion was made, seconded, and carried to exit Executive Session

After Executive Session, the Board voted on the Oxford Hills application for replacement of their retort. The Board accepted the representation that at the time of grandfathering the third retort was not being used because it was in need of repair and not out choice by the applicant. Motion was made, seconded and unanimously adopted approving the application.

Motion made, seconded, and carried to adjourn the meeting. Meeting adjourned at 1:10 PM.

The next Board meeting is scheduled for July 14, 2020 at 10:30 AM, via Webex, and, circumstances permitting, possibly in person.